

1 Susan E. Coleman (SBN 171832)
2 E-mail: scoleman@bwsllaw.com
3 Carmen M. Aguado (SBN 291941)
4 E-mail: caguado@bwsllaw.com
5 BURKE, WILLIAMS & SORESENSEN, LLP
6 444 South Flower Street, Suite 2400
7 Los Angeles, CA 90071-2953
8 Tel: 213.236.0600 Fax: 213.236.2700

9 Attorneys for Defendants
10 THE GEO GROUP, INC., DIAZ, CAMPOS and
11 CITY OF ADELANTO

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14 OMAR ARNOLDO RIVERA
15 MARTINEZ; ISAAC ANTONIO
16 LOPEZ CASTILLO; JOSUE
17 VLADIMIR CORTEZ DIAZ; JOSUE
18 MATEO LEMUS CAMPOS;
19 MARVIN JOSUE GRANDE
20 RODRIGUEZ; ALEXANDER
21 ANTONIO BURGOS MEJIA; LUIS
22 PEÑA GARCIA; JULIO CESAR
23 BARAHONA CORNEJO, as
24 individuals,

25 Plaintiffs,

26 v.

27 THE GEO GROUP, Inc., a Florida
28 corporation; the CITY OF
ADELANTO, a municipal entity; GEO
LIEUTENANT DURAN, sued in her
individual capacity; GEO
LIEUTENANT DIAZ, sued in her
individual capacity; GEO
SERGEANT CAMPOS, sued in his

Case No. 5:18-cv-01125-SP

**DEFENDANTS DIAZ AND
CAMPOS' SEPARATE
STATEMENT OF
UNCONTROVERTED FACTS AND
CONCLUSIONS OF LAW IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT OR, IN
THE ALTERNATIVE, PARTIAL
SUMMARY JUDGMENT**

*[Notice of Motion and Motion for
Summary Judgment; Memorandum of
Points & Authorities; Declaration of
Carmen M. Aguado; and [Proposed]
Order Filed Concurrently]*

Hearing Date: December 17, 2019
Time: 10:00 a.m.
Courtroom: 3

Mag. Judge: Honorable Sheri Pym

individual capacity; SARAH JONES,
sued in her individual capacity; THE
UNITED STATES OF AMERICA;
and DOES 1-10, individuals,

Defendants.

Defendants Diaz and Campos hereby submit this Separate Statement of
Uncontroverted Facts and Conclusions of Law together with references to evidence
in support of their Motion for Summary Judgment:

UNCONTROVERTED FACTS & SUPPORTING EVIDENCE

Defs' SUF No.	UNCONTROVERTED MATERIAL FACTS	EVIDENTIARY SUPPORT
1.	In May 2011, GEO entered into contract with U.S. Immigration & Customs Enforcement (ICE) for the detention and care of immigrant detainees at the Adelanto Detention Facility ("Facility"), which houses immigrant detainees, through an intergovernmental service agreement with the City.	Janecka Decl. ¶¶ 3, 5; Hart Decl. ¶¶ 3-6, 12; Ex. "L" [Agenda Report dated May 17, 2011]; Ex. "M" [2011 Service Agreement].
2.	Thereafter, in June 2019, GEO directly contracted with ICE to manage and operate the Facility.	Janecka Decl. ¶ 3.

1 2 3 4 5	3. Irrespective of the change of parties to the contract, GEO has been solely responsible for the management and operations of the Facility since May 2011.	Janecka Decl. ¶ 3; Hart Decl. ¶¶ 3-6, 12.
6 7 8 9 10 11 12 13 14 15	4. In June 2017, Plaintiffs were housed at the Adelanto Detention Facility (“Facility”) that is operated and managed by The GEO Group, Inc. within a dorm. Upon being admitted, Plaintiffs were provided a detainee handbook that established the rules at the Facility, including the rules pertaining to the “count” procedures.	Diaz Decl. 12, Ex. “A” [Detainee Handbook]; Ex. “N” [Cornejo Depo.] at 22:18-23:1; Ex. “O” [Campos Depo.] at 38:18-41:19; Ex. “U” [Martinez Depo.] at 34:9-25.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5.	Irrespective of whether the Plaintiffs read the handbook, they all knew that there were multiple times throughout the day when they had to return to their bunks to be counted by GEO staff and that it was a direct order to return to their bunks.	Ex. “N” [Cornejo Depo.] at 22:18-23:1, 24:15-25:14; Ex. “O” [Campos Depo.] at 38:18-41:19, 42:8-21, 43:4-8, 44:8-45:17, 84:11-25, 104:8-18; Ex. “P” [Castillo Depo.] at 31:19-34:6, 67:9-68:9, 71:21-72:1; Ex. “Q” [Mejia Depo.] at 27:18-23, 29:21-30:8, 64:10- 66:10, 68:10-16; Ex. “R” [Rodriguez Depo.] at 38:20-:39:11, 48:7-14, 51:22-25, 92:2-14; Ex. “S” [Garcia Depo.] at 22:1-13, 38:11-14, 60:6-21; Ex. “T” [Diaz Depo] at 18:9-21, 46:5-20; Ex. “U” [Martinez Depo.] at 34:9-25, 37:7-22, 37:21-28:2.
----	--	---

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	6. This procedure was/is referred to as “count” and it is a critical time period at the Facility. In short, the officer assigned to the dorm will announce that it is time for count by using words to the effect of “get back to your bunks,” “count time,” or “rack up” approximately ten (10) minutes before the count to allow detainees time to prepare for count (e.g. use the restroom). When the detainee returns to his/her bunk for count, this is commonly referred to as “racking up for count.” The entire count process takes approximately 30 to 45 minutes. If count is not completed within an hour, the Facility enters an “emergency count” and ICE then becomes involved.	Diaz Decl. ¶¶ 10-13, Ex. “A” [Detainee Handbook - OFFICIAL COUNTS]; Ex. “N” [Cornejo Depo.] at 22:18-23:1, 24:15-25:14; Ex. “Y” [GEO Martinez Depo.] at 63:20-64:19; Ex. “Z” [Reyes Depo.] at 164:10-24.
19 20 21 22 23 24 25 26 27 28	7. The count procedure is important because it is the mechanism by which the Facility is able to determine whether a detainee has escaped from the Facility.	Diaz Decl. ¶¶ 10-13, Ex. “N” [Cornejo Depo.] at 22:18-23:1, 24:15-25:14; Ex. “Y” [GEO Martinez Depo.] at 63:20-64:19; Ex. “Z” [Reyes Depo.] at 164:10-24.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

8. Plaintiffs also understood that failing to comply with orders would result in consequences.

Ex. “N” [Cornejo Depo.] at 22:18-23:1, 24:15-25:14; Ex. “O” [Campos Depo.] at 38:18-41:19, 42:8-21, 43:4-8, 44:8-45:17, 104:8-18; Ex. “P” [Castillo Depo.] at 31:19-34:6, 71:21-72:1; Ex. “Q” [Mejia Depo.] at 27:18-23, 29:21-30:8, 64:10- 66:10, 68:10-16; Ex. “R” [Rodriguez Depo.] at 38:20-39:11, 48:7-14, 51:22-25, 92:2-14; Ex. “T” [Diaz Depo] at 18:9-21; Ex. “U” [Martinez Depo.] at 34:9-25, 37:7-22, 37:21-28:2.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

9. On or around June 11, 2017, Plaintiffs met and prepared a list of demands/grievances to present to GEO staff. Thereafter, on June 12, 2017, at around 6:22:24 a.m., Plaintiff Castillo gave the list of demands that was (1) written in Spanish and (2) did not mention that Plaintiffs were engaging in a “hunger strike” to the dorm officer, Officer Gillon, who Plaintiffs knew only spoke English and was unable to read the letter.

Ex. “F” [Video recording] at 6:22:24 a.m.; Ex. “N” [Cornejo Depo.] at 36:23-37:20, 42:3-16, 42:25-43:8, 50:8-13; Ex. “O” [Campos Depo.] 78:11-24, 80:9-20, 82:2-24, 84:11-25, 85:7-23; Ex. “P” [Castillo Depo.] at 72:2-10, 74:21-75:19, 73:7-19, 77:5-15 (acknowledging Officer Gillon was unable to read or understand the list of demands), 74:21-75:19; Ex. “Q” [Mejia Depo.] at 56:2-57:6, 61:7-62:25; Ex. “R” [Rodriguez Depo.] at 79:16-80:14, Ex. 1 [Copy of list of demands], 81:4-82:25 (translating the list of demands); Ex. “S” [Garcia Depo.] at 34:16-36:5; Ex. “T” [Diaz Depo] at 42:16-43:12, 50:19-51:25, 62:19-63:3; Ex. “V” [Gillon Depo] at 14:1-4, 86:11-20, 142:6-21.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	10. The list of demands was presented of Officer Gillon after breakfast (the first meal that Plaintiffs missed, but did not inform anyone that they intentionally skipped) and immediately before count, which Plaintiffs knew routinely took place after breakfast. Since Officer Gillon does not speak Spanish, another detainee was asked to translate the list of demands (that did not mention a “hunger strike”) to Officer Gillon.	Ex. “F” [Video recording] at 6:24 a.m.; Ex. “N” [Cornejo Depo.] at 42:3-16, 42:25-43:8; Ex. “O” [Campos Depo.] at 78:5-10, 84:11-25; Ex. “P” [Castillo Depo.] at 65:20-24, 67:9-68:9; Ex. “Q” [Mejia Depo.] at 55:19-20; Ex. “R” [Rodriguez Depo.] at 85:12-86:21, 95:9-7; Ex. “S” [Garcia Depo.] at 32:12-18; Ex. “T” [Diaz Depo] at 41:21-42:3, 42:16-43:12, 46:5-20, 52:21-53:10, 63:21-64:21; Ex. “U” [Martinez Depo.] at 72:17-73:8, 78:24-80:2.
17 18 19 20 21 22 23 24 25 26	11. At around 6:23 a.m., Plaintiff Castillo handed Officer Gillon a second piece of paper that listed Plaintiffs’ names. Meanwhile, the other plaintiffs sat at two separate tables in the dayroom of the dorm to gain attention.	Ex. “F” [Video recording] at 6:23 a.m.; Ex. “N” [Cornejo Depo.] at 45:15-18, 55:2-7; Ex. “P” [Castillo Depo.] at 70:25-71:15; Ex. “R” [Rodriguez Depo.] at 148:20-24; Ex. “T” [Diaz Depo] at 63:4-16, 78:2-79:13 (stating second piece of paper was a list of names)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

12.	At around 6:29:59 a.m., Officer Jindi arrived to the dorm to relieve Officer Gillon. Officer Gillon explained to Officer Jindi that he received papers and that “something” was going on. Officer Jindi instructed him to give the papers to Lt. Diaz. Thereafter, Officer Jindi announced that it was time for count and Plaintiffs chose to ignore the order.	Ex. “F” [Video recording] at 6:29:59 a.m.; Ex. “O” [Campos Depo.] at 175:6-20 (“I know that I wasn’t complying with the rules.”); Ex. “P” [Castillo Depo.] at 67:9-68:9, 78:7-79:4; Ex. “Q” [Mejia Depo.] at 67:22-68:1, 70:1-9; Ex. “R” [Rodriguez Depo.] at 92:2-14, 96:8-19; Ex. “S” [Garcia Depo.] at 38:11-14; Ex. “T” [Diaz Depo] at 46:5-20; Ex. “U” [Martinez Depo.] at 87:1-89:3; Ex. “V” [Gillon Depo] at 90:19-21, 157:8-11, 158:17-20; Ex. “X” [Jindi Depo.] at 35:9-14, 36:8-37:5, 37:8-19, 40:15-20, 58:23-25, 63:8-14.
-----	---	---

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>13.</p>	<p>Officer Jindi had no information that there was an alleged hunger strike. Indeed, Plaintiffs admitted that they are guessing that Officer Gillon was informed and knew they were on a hunger strike.</p>	<p>Ex. “O” [Campos Depo.] at 85:7-23, 94:22-95:15; Ex. “Q” [Mejia Depo.] at 58:15-59:14, 60:11-14, 63:23-25, 67:8-11, 159:7-24 (admitting that the papers that were given to Officer Gillon did not mention the hunger strike, but he assumes that someone verbally told Officer Gillon); Ex. “R” [Rodriguez Depo.] at 95:9-7; Ex. “S” [Garcia Depo.] at 38:20-24; Ex. “T” [Diaz Depo] at 50:4-10, 73:7-14, 77:23-78:3; Ex. “U” [Martinez Depo.] at 78:24-80:2; Ex. “V” [Gillon Depo] at 92:25-93:3 (demonstrating that he was never told verbally of the hunger strike); Ex. “X” [Jindi Depo.] at 35:9-14, 36:8-37:5; Ex. “Y” [GEO Martinez Depo.] at 141:4-18.</p>
------------	---	--

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	14. Officer Jindi used her radio and requested assistance because Plaintiffs were not returning to their bunks for count per her order – she did not communicate any additional information. In response to Officer Jindi’s request, at around 6:32:51 a.m., Lt. Diaz arrived to the dorm with GEO officers, including Officer Gillon, Officer Martinez, and Officer Reyes, and LVN Jones.	Diaz Decl. ¶¶ 9, 14; Campos Decl. ¶ 4; Ex. “F” [Video recording] at 6:30:37 to 6:32:51 a.m.; Ex. “R” [Rodriguez Depo.] at 96:8-19; Ex. “S” [Garcia Depo.] at 38:15-19; Ex. “T” [Diaz Depo] at 53:8-24; Ex. “V” [Gillon Depo] at 97:15-24, 98:10-14; Ex. “W” [Jones Depo.] at 79:1-25, 80:25-81:5; Ex. “X” [Jindi Depo.] at 37:8-19, 40:15-20, 41:12-17, 41:22-42:9; Ex. “Y” [GEO Martinez Depo.] at 44:4-12; Ex. “Z” [Reyes Depo.] at 76:12-77:5, 77:6-14.
17 18 19 20 21 22 23 24 25 26 27 28	15. Before entering the dorm, in addition to the information that Lt. Diaz learned from Officer Jindi over the radio, she had the list of Plaintiffs’ names that were written on the second piece of paper and was informed that Plaintiffs were <i>threatening</i> to start a hunger strike if their demands were not met.	Diaz Decl. ¶ 9; Ex. “V” [Gillon Depo] at 90:19-21, 157:8-11.

1	16.	When Lt. Diaz, the GEO officers, and	Ex. "F" [Video recording] at
2		LVN Jones arrived to the dorm at	6:32 to 6:33:09; Diaz Decl. ¶¶
3		around 6:32 a.m., Plaintiffs were seated	14-17; Ex. "N" [Cornejo Depo.]
4		at two tables in the dayroom of the	at 73:13-16; Ex. "O" [Campos
5		dorm and refused to go to their bunks	Depo.] at 93:4-21; Ex. "P"
6		for count. Then, Lt. Diaz asked	[Castillo Depo.] at 78:7-79:4;
7		Plaintiffs to go to their bunks for count	Ex. "Q" [Mejia Depo.] at 67:22-
8		in a stern tone. In response, Plaintiffs	68:1, 68:10-16, 70:1-9; Ex. "V"
9		stated that they wanted to speak to ICE.	[Gillon Depo] at 98:24-99:2,
10		Because Plaintiffs were not responding	160:15-161:3; Ex. "W" [Jones
11		to Lt. Diaz commands (and in some	Depo.] at 88:21-89:12, 93:11-
12		cases, not even paying attention to her),	22; Ex. "Y" [GEO Martinez
13		she asked GEO officers to translate,	Depo.] at 54:10-17; Ex. "Z"
14		which they did.	[Reyes Depo.] at 79:12-80:5,
15			86:9-20, 94:1-22.
16	17.	Throughout the incident, GEO Officers	Ex. "F" [Video recording] at
17		Martinez, who speaks Spanish fluently,	6:37:06 to 6:37:49, 6:43:17; Ex.
18		and Reyes unsuccessfully tried to	"V" [Gillon Depo] at 163:21-
19		negotiate and reason with Plaintiffs.	25, 164:1-4; Ex. "Y" [GEO
20		They explained that ICE was not	Martinez Depo.] at 13:6-12,
21		present at the Facility; thus, Plaintiffs	45:12-25, 46:21-47:4, 47:5-9,
22		should return to their bunks for count	60:7-61:13, 61:21-63:19, 65:4-
23		and revisit their strike/protest after	18, 72:6-73:8, 94:23-95:8,
24		count, when ICE was present. But,	99:17-100:18; Ex. "Z" [Reyes
25		Plaintiffs refused and repeated they	Depo.] at 92:10-24, 147:13-18;
26		wanted to see ICE.	149:2-150:25, 164:7-25;
27			183:19-24.
28			

1	18.	Plaintiffs admitted that they knew Lt. Diaz and the responding GEO officers ordered them in English and Spanish to return to their bunks and/or leave the tables. They also understood that there would be consequences, including the use of OC spray, for their decision to ignore the commands	Ex. “N” [Cornejo Depo.] at 73:13-16; Ex. “P” [Castillo Depo.] at 78:7-79:4, 80:1-81:3, 82:17-83:20, 84:7-14, 84:18-25; Ex. “Q” [Mejia Depo.] at 70:1-71:25, 73:16-18; Ex. “R” [Rodriguez Depo.] at 97:2-16; Ex. “U” [Martinez Depo.] at 87:1-89:3.
2	19.	Significantly, Plaintiffs also admitted they had no intention of complying with the commands unless force was used as this would help them garner more attention for their strike.	Ex. “O” [Campos Depo.] at 97:5-12, 103:11-104:6; Ex. “T” [Diaz Depo] at 83:2-3 (“Because we were already there. We needed to fight for it, to struggle, to be heard.”)
3	20.	Importantly, during the entire time that Plaintiffs ignored the commands from Lt. Diaz and GEO officers, at least one plaintiff admitted that they did not tell Lt. Diaz they were on a hunger strike.	Ex. “O” [Campos Depo.] at 94:22-95:15.
4	21.	After giving numerous commands, at around 6:38:01, four officers (including Officers Gillon, Reyes and Martinez) removed Plaintiffs Martinez and Rodriguez from Table A by pulling Plaintiffs Martinez and Rodriguez by their arms.	Diaz Decl. ¶ 18; Ex. “F” [Video recording] at 6:38:00 to 6:38:52; Ex. “V” [Gillon Depo] at 105:21-106:23, 110:1-6, 112:3-15, 113:2-5, 164:22-25, 166:6-24.

1	22.	Instead of complying, Plaintiffs	Diaz Decl. ¶¶ 18, 47; Ex. “F”
2		Martinez and Rodriguez grabbed on to	[Video recording] at 6:38:01 to
3		each other, which forced the officers to	6:38:52; Ex. “R” [Rodriguez
4		physically separate them. The officers	Depo.] at 101:7-23, 102:4-19;
5		separated the two plaintiffs at around	Ex. “V” [Gillon Depo] at 167:6-
6		6:38:50 without striking, punching, or	16; Ex. “W” [Jones Depo.] at
7		kicking them; the officers simply pulled	110:11-21; Ex. “Y” [GEO
8		them apart.	Martinez Depo.] at 88:25-89:2.
9	23.	Plaintiff Rodriguez was escorted out of	Diaz Decl. ¶¶ 18, 26, 47; Ex.
10		the dorm by two officers without issue	“F” [Video recording] at
11		at around 6:39 a.m. While Plaintiff	6:38:54 to 6:39; Ex. “R”
12		Rodriguez claims he was struck and	[Rodriguez Depo.] at 98:11-21,
13		sprayed with OC numerous times while	99:7-9, 101:7-23, 103:3-6,
14		in the dorm room, the uncontroverted	105:2-11, 114:3-10, 152:12-24,
15		video evidence and his alleged injuries	153:7-10; Ex. “W” [Jones
16		demonstrates otherwise.	Depo.] at 110:11-21.
17	24.	Additionally, Plaintiff Rodriguez claims	Ex. “R” [Rodriguez Depo.] at
18		that once he was outside the dorm	107:5-108:23, 114:3-10; Ex.
19		room, unknown GEO personnel pushed	“W” [Jones Depo.] at 163:20-
20		him into a wall. Again, his injuries	24; SAC ¶ 11-12 (demonstrating
21		demonstrate otherwise.	Plaintiff Martinez allegedly lost
22			his tooth).
23			
24			
25			
26			
27			
28			

1	25.	Plaintiff Martinez, however, continued	Diaz Decl. ¶ 18; Ex. “F” [Video
2		to actively resist after being separated	recording] at 6:38:55 to 6:39:07;
3		from Plaintiff Rodriguez by digging his	Ex. “T” [Diaz Depo] at 83:17-
4		heels into the ground. As Officers	23; Ex. “V” [Gillon Depo] at
5		Martinez and Gillon tried to escort him	168:15-19; Ex. “U” [Martinez
6		out past Table B, he grabbed on to	Depo.] at 89:10-91:19, 93:4-
7		Plaintiff Diaz, who was seated at Table	94:6, 94:11-95:5; Ex. “Y” [GEO
8		B. The officers separated the two men	Martinez Depo.] at 74:7-75:14,
9		by pulling Plaintiff Martinez off of	75:22-76:1, 79:22-80:2, 80:6-
10		Plaintiff Diaz.	21, 80:22-81:24, 84:2-85:16,
11			87:20-88:24, 88:25-89:2, 89:3-
12			4; Ex. “W” [Jones Depo.] at
13			110:11-21.
14	26.	Plaintiff Martinez continued to resist	Ex. “F” [Video recording] at
15		and struggle the entire time the officers	6:39:05 to 6:39:23.
16		were trying to escort him out of the	
17		dorm, which is depicted on the video	
18		recording from 6:39:05-6:39:23 a.m.	
19	27.	While Plaintiff Martinez alleges he was	Diaz Decl. ¶¶ 20, 26; Ex. “F”
20		sprayed while outside the dorm by a	[Video recording]; Ex. “U”
21		blonde woman and two other unknown	[Martinez Depo.] at 105:9-
22		GEO supervisors, the video	107:24.
23		demonstrates Lt. Diaz did not leave the	
24		dorm after Plaintiff Martinez was	
25		escorted out.	
26			
27			
28			

1	28.	Additionally, there was no OC spray	Ex. “U” [Martinez Depo.] at
2		deployed outside of the dorm or while	105:9-107:24; Ex. “Y” [GEO
3		any plaintiff was restrained by an	Martinez Depo.] at 84:20-85:7;
4		officer.	Ex. “Z” [Reyes Depo.] at
5			117:11-18.
6	29.	While the officers were escorting	Diaz Decl. ¶¶ 19- 20, 22; Ex.
7		Plaintiffs Martinez and Rodriguez out	“F” [Video recording] at
8		of the dorm, Plaintiffs Cornejo, Castillo,	6:39:32; Ex. “T” [Diaz Depo] at
9		Mejia, Diaz, and Campos (seated at	81:20-25; Ex. “P” [Castillo
10		Table B) interlocked their arms and	Depo.] at 86:6-87:24; Ex. “V”
11		tethered their feet around the legs of	[Gillon Depo] at 104:24-105:5.
12		Table B to make it more difficult for the	
13		officers to remove them from the table	
14		– i.e. Plaintiffs were actively resisting –	
15		and Plaintiff Garcia moved from Table	
16		A to Table B and sat next to Plaintiff	
17		Campos.	
18	30.	The dorm, during a period that is	Diaz Decl. ¶ 21; Campos Decl.
19		supposed to be very quiet, was in an	¶ 6; Ex. “O” [Campos Depo.] at
20		uproar and completely out of control.	90:11-91:22; Ex. “W” [Jones
21			Depo.] at 103:20-104:10; Ex.
22			“Y” [GEO Martinez Depo.] at
23			131:24-132:12, 133:1-18,
24			134:7-11.
25			
26			
27			
28			

1	31.	Lt. Diaz determined that Plaintiffs Diaz, Campos, Cornejo, Castillo, Garcia and Mejia were not going to comply with the verbal commands, they were actively resisting (interlocking arms), and they were causing the other detainees to become, likewise, out of control.	Diaz Decl. ¶ 23; McCusker Decl. ¶¶ 7-8; Ex. “H” [GEO’s Use of Force policy]; Ex. “O” [Campos Depo.] at 103:11-104:6, 105:9-16.
2			
3			
4			
5			
6			
7			
8			
9			
10	32.	She recognized that she needed to immediately regain control because the continued delay in resolving the confrontation was causing a major disturbance within the dorm and entire Facility.	Diaz Decl. ¶¶ 23-24; McCusker Decl. ¶¶ 7-8; Ex. “H” [GEO’s Use of Force policy]; Ex. “Y” [GEO Martinez Depo.] at 68:20-69:4.
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

33.	Thus, after trying to de-escalate the situation for more than 9 minutes, giving several warning that she planned to use OC spray, which Plaintiffs understood, and GEO officers unsuccessfully trying to pull plaintiffs away from the tables, Lt. Diaz deployed an extremely short burst of OC spray down the middle of Table B.	Diaz Decl. ¶¶ 23-25; Ex. “F” [Video recording] at 6:42:12; Ex. “Y” [GEO Martinez Depo.] at 95:17-25, 95:25-96:6, 97:9-11, 98:8-17, 98:18-21; Ex. “Z” [Reyes Depo.] at 91:6-10, 95:9-96:8, 98:2-23; Ex. “O” [Campos Depo.] at 97:25-98:18, 99:16-23, 100:4-11; Ex. “Q” [Mejia Depo.] at 73:16-18, 76:7-15; Ex. “P” [Castillo Depo.] at 80:1-81:3, 84:7-14, 88:9-24, 94:21-95:1; Ex. “R” [Rodriguez Depo.] at 97:2-16; Ex. “V” [Gillon Depo] at 104:24-105:5.
34.	Lt. Diaz intentionally did not directly spray Plaintiffs Diaz, Campos, Cornejo, Castillo, Garcia and Mejia despite their contentions otherwise.	Diaz Decl. ¶¶ 23-25; Ex. “F” [Video recording] at 6:42:21; Ex. “N” [Cornejo Depo.] at 71:10-12; Ex. “O” [Campos Depo.] at 97:25-98:18, 99:16-23, 100:4-11; Ex. “P” [Castillo Depo.] at 89:25-90:18, 93:5-10; Ex. “Q” [Mejia Depo.] at 74:18-75:5, 76:7-15; Ex. “Y” [GEO Martinez Depo.] at 95:17-25, 95:25-96:6, 97:9-11

1	35.	This was the only use of force that Lt. Diaz directly used.	Diaz Decl. ¶¶ 25-27; Ex. “X” [Jindi Depo.] at 49:24-50:23; Ex. “Y” [GEO Martinez Depo.] at 84:20-85:7, 98:3-5.
2	36.	Not only were Plaintiffs Diaz, Campos, Garcia, Cornejo, Castillo, and Mejia unfazed by Lt. Diaz’s warnings, but they were similarly unfazed by the short burst of spray as they continued to remain seated at Table B with their arms interlocked and heads down on the table.	Diaz Decl. ¶ 27; Ex. “F” [Video recording] at 6:42:21 a.m.
3	37.	At 6:43:47, after trying to convince the remaining plaintiffs to comply, Officers Reyes and Martinez attempted to remove Plaintiff Garcia from the table by pulling on his arms.	Diaz Decl. ¶ 28; Ex. “F” [Video recording] at 6:43:47 – 6:44:09 a.m.; Ex. “S” [Garcia Depo.] at 45:3-14; Ex. “Y” [GEO Martinez Depo.] at 99:17-100:18, 101:6-102:22, 103:9-19; Ex. “Z” [Reyes Depo.] at 186:15-25.

1	38.	As depicted in the video, Plaintiff	Diaz Decl. ¶ 28; Ex. “F” [Video
2		Garcia lunged away from the Officers	recording] at 6:43:47 – 6:44:09
3		Reyes and Martinez towards the table,	a.m.; Ex. “S” [Garcia Depo.] at
4		which prompted a third officer to assist.	45:3-14; Ex. “Y” [GEO
5			Martinez Depo.] at 99:17-
6			100:18, 101:6-102:22, 103:9-19;
7			Ex. “Z” [Reyes Depo.] at
8			186:15-25.
9			
10	39.	While the three officers (including	Diaz Decl. ¶ 28; Ex. “F” [Video
11		Officers Reyes and Martinez) struggled	recording] at 6:43:47 – 6:44:09
12		to remove Plaintiff Garcia, Plaintiff	a.m.; Ex. “S” [Garcia Depo.] at
13		Campos grabbed on to Plaintiff Garcia	45:3-14; Ex. “Y” [GEO
14		and pushed the officers away from	Martinez Depo.] at 99:17-
15		Garcia with his left hand/arm (at around	100:18, 101:6-102:22, 103:9-19;
16		6:43:54).	Ex. “Z” [Reyes Depo.] at
17			186:15-25.
18			
19	40.	As a result, the officers had to separate	Diaz Decl. ¶ 28; Ex. “F” [Video
20		Plaintiffs Garcia and Campos by pulling	recording] at 6:43:47 – 6:44:09
21		them apart.	a.m.; Ex. “S” [Garcia Depo.] at
22			45:3-14; Ex. “Y” [GEO
23			Martinez Depo.] at 99:17-
24			100:18, 101:6-102:22, 103:9-19;
25			Ex. “Z” [Reyes Depo.] at
26			186:15-25.
27			
28			

1	41.	Eventually, Officers Reyes and	Diaz Decl. ¶ 28; Ex. “F” [Video
2		Martinez were able to gain control of	recording] at 6:43:47 – 6:44:09
3		Plaintiff Garcia and escort him out of	a.m.; Ex. “S” [Garcia Depo.] at
4		the dorm.	45:3-14; Ex. “Y” [GEO
5			Martinez Depo.] at 99:17-
6			100:18, 101:6-102:22, 103:9-19;
7			Ex. “Z” [Reyes Depo.] at
8			186:15-25.
9			
10	42.	Meanwhile, Lt. Diaz realized the	Diaz Decl. ¶ 27; Campos Decl.
11		situation was completely out of control	¶¶ 4-5; Ex. “R” [Rodriguez
12		(Plaintiffs were interlocking arms and	Depo.] at 100:22-24
13		refusing to comply, and the other	[acknowledged other detainees
14		detainees were also yelling and acting	in dorm were yelling]; Ex. “W”
15		in a rowdy manner), so she called for	[Jones Depo.] at 103:20-104:10;
16		additional assistance.	Ex. “X” [Jindi Depo.] at 46:8-
17			47:2; Ex. “Y” [GEO Martinez
18			Depo.] at 131:24-132:12, 133:1-
19			18.
20	43.	Next, at around 6:45:58, officers	Diaz Decl. ¶ 29; Ex. “F” [Video
21		attempted to pull Plaintiff Mejia from	recording] at 6:45:58-6:46:18;
22		the table. To do so, the officers tried to	Ex. “Q” [Mejia Depo.] at 76:20-
23		unlink Plaintiffs Mejia’s arms from	77:4, 77:23-78:5; Ex. “V”
24		Plaintiff Castillo.	[Gillon Depo] at 170:14-16,
25			170:23-117:3.
26			
27			
28			

1	44.	Despite Plaintiff Mejia resisting (which	Diaz Decl. ¶¶ 29, 47; Ex. “F”
2		he denies) the officers are able to	[Video recording] at 6:45:58-
3		remove Plaintiffs Mejia from the table	6:46:18; Ex. “Q” [Mejia Depo.]
4		at around 6:46:18 without using any	at 82:10-20; Ex. “V” [Gillon
5		force.	Depo] at 170:14-16, 170:23-
6			117:3.
7	45.	Additionally, while Plaintiff Mejia	Diaz Decl. ¶ 47; Ex. “F” [Video
8		stated he was hit an unknown amount of	recording] at 6:45:58-6:46:18;
9		times by unknown officers and thrown	Ex. “Q” [Mejia Depo.] at 35:24-
10		against a wall, the video evidence	37:13, 76:20-77:4, 77:14-22,
11		demonstrates that he was <i>not</i> . The	77:23-78:5, 78:6-79:3, 79:11-
12		officers only pulled him from the table	18, 80:9-19; 82:10-20, 109:22-
13		and, thereafter, struggled to gain control	110:15, 110:16-20.
14		of him while he was resisting the entire	
15		time.	
16	46.	As the officers were trying to walk	Diaz Decl. ¶ 30; Campos Decl.
17		Plaintiff Mejia out of the dorm, at	¶¶ 4-6; Ex. “F” [Video
18		around 6:46:18, Sgt. Campos responded	recording] at 6:46:18; Ex. “X”
19		to Lt. Diaz’s call and entered the dorm.	[Jindi Depo.] at 47:6-11.
20			
21			
22	47.	Sgt. Campos immediately assisted the	Diaz Decl. ¶ 31; Campos Decl.
23		two officers, including Officer	¶ 7; Ex. “F” [Video recording]
24		Martinez, that were struggling to	at 6:46:18-6:46:24; Ex. “Y”
25		remove Plaintiff Mejia, who was being	[GEO Martinez Depo.] at
26		combative.	107:19-109:16; Ex. “Z” [Reyes
27			Depo.] at 110:3-111:4.
28			

1	48.	Namely, even though Plaintiff Mejia had his arms behind his back and there was an officer on each of his arms, he, nevertheless, resisted and tried to run from the officers. The two officers had not gained his compliance despite their efforts.	Campos Decl. ¶ 7; Ex. “Y” [GEO Martinez Depo.] at 107:19-109:16, 110:3-9; Ex. “F” [Video recording] at 6:46:18-6:46:24.
2	49.	Thus, Sgt. Campos guided the group to the wall because this would allow the officers to secure Plaintiff Mejia’s arms so he could be escorted out without injury.	Campos Decl. ¶¶ 7-8; Ex. “Y” [GEO Martinez Depo.] at 107:19-109:16, 110:3-9; Ex. “F” [Video recording] at 6:46:18-6:46:24.
3	50.	While Sgt. Campos assisted the officers with Plaintiff Mejia, others officers continued to try to break up Plaintiffs Diaz, Campos, Cornejo, and Castillo by untangling their arms, but the plaintiffs resisted and refused to be removed from Table B.	Diaz Decl. ¶ 31; Campos Decl. ¶ 9; Ex. “F” [Video recording] at 6:46:24.
4	51.	Eventually, the three officers were able to pull Castillo away from the table without using any force.	Diaz Decl. ¶¶ 31, 47; Campos Decl. ¶ 17; Ex. “V” [Gillon Depo] at 171:4-20; Ex. “F” [Video recording] at 6:46:24-6:46:33.

1	52.	While Plaintiff Castillo makes various	Diaz Decl. ¶¶ 31, 47; Campos
2		allegations about being punched and	Decl. ¶ 17; Ex. “F” [Video
3		states that he was slammed against	recording] at 6:46:24-6:46:33;
4		glass, the video evidence demonstrates	Ex. “P” [Castillo Depo.] at
5		otherwise.	89:3-8, 89:15-24, 94:7-9; Ex.
6			“V” [Gillon Depo] at 171:4-20.
7	53.	Sgt. Campos then walked toward Table	Diaz Decl. ¶ 32; Campos Decl.
8		B where officers were trying to grab	¶ 9; Ex. “F” [Video recording]
9		Plaintiffs Diaz, Campos, and Cornejo’s	at 6:46:33-6:46:44.
10		arms to separate them (the remaining	
11		plaintiffs still had their arms	
12		interlocked.)	
13	54.	Plaintiffs Diaz, Campos, and Cornejo	Campos Decl. ¶ 9; Diaz Decl. ¶
14		grabbed on to each other to prevent the	31; Ex. “F” [Video recording] at
15		officers from gaining their compliance.	6:46:18-6:46:44.
16		In turn, the officers struggled to	
17		separate them.	
18	55.	Plaintiff Cornejo admitted that the	Ex. “N” [Cornejo Depo.] at
19		officers were trying to separate them	68:21-22; Ex. “O” [Campos
20		“from the hands” and Plaintiff Campos	Depo.] at 107:12-15.
21		acknowledged the officers tried to	
22		separate them one by one.	
23			
24			
25			
26			
27			
28			

56.	Sgt. Campos determined that any further delay in bringing this situation under control would result in a major disturbance and further serious disorder within the dorm.	Campos Decl. ¶ 10; McCusker Decl. ¶¶ 7-8; Ex. “H” [GEO’s Use of Force policy].
57.	As such, he determined that it was reasonable under the circumstances to deploy OC spray	Campos Decl. ¶ 10; McCusker Decl. ¶¶ 7-8; Ex. “H” [GEO’s Use of Force policy].
58.	He instructed the officers to move away from the table, yelled, “OC spray warning,” and commanded the plaintiffs at the table to stop resisting.	Campos Decl. ¶ 10.
59.	Based on the video recording, at around 6:46:46 a.m. to 6:46:47 a.m., Sgt. Campos deployed OC spray in the direction of Plaintiffs Diaz, Campos, and Cornejo, who had their arms interlocked and were huddled together across the table.	Campos Decl. ¶ 11; Diaz Decl. ¶ 32. Campos Decl. ¶ 11; Ex. “F” [Video recording] at 6:46:46-6:46:47; Ex. “T” [Diaz Depo] at 83:17-23.
60.	Then, he moved to the opposite end of the table and deployed a second extremely short burst of OC spray towards Plaintiffs Diaz and Campos.	Campos Decl. ¶ 11; Diaz Decl. ¶ 32; Ex. “F” [Video recording] at 6:46:47-6:46:52.

1	61.	At 6:46:56, one officer grabbed Plaintiff Campos and Plaintiff Campos fell to the ground. The same officer then picked up Plaintiff Campos and quickly placed him against a wall to gain control of Plaintiff Campos.	Ex. "F" [Video recording] at 6:46:56-6:47:27; Ex. "O" [Campos Depo.] at 108:3-13,112:13-113:6, 113:20-23, 202:20-24, 205:25-206:3.
2	62.	Plaintiff Campos then returned to the table. Immediately thereafter, a different officer tried to pull Plaintiff Campos from the table, but Plaintiff Campos continued to refuse to stand up (despite having just demonstrated he could walk). Two officers lifted Plaintiff Campos to take him out and, eventually, Plaintiff Campos stood up on his own to exit the dorm.	Ex. "F" [Video recording] at 6:47:27-6:47:57.
3	63.	Plaintiff Campos admitted that he was never struck, kicked, or punched during the entire incident, and he admits that he was never "brutally beaten" as alleged in his operative complaint.	Ex. "O" [Campos Depo.] at 111:5-113:6, 113:8-18, 113:24-114:7, 114:24-115:20, 205:13-18.
4	64.	At 6:47:01, Plaintiff Diaz was escorted out of the dorm by an officer without issue.	Ex. "F" [Video recording] at 6:47:01-6:47:24; Ex. "T" [Diaz Depo] at 59:4-11.

1	65.	At most, Plaintiff Diaz alleges that the	Ex. “T” [Diaz Depo] at 56:7-25,
2		officers “pinched” him, pulled on his	57:6-58:3, 83:21-23; Ex. “Y”
3		arms in an effort to separate him from	[GEO Martinez Depo.] at
4		the other plaintiffs, and applied pressure	77:14-78:1 (explaining that after
5		behind his ears; but admitted that no	presence and verbal commands
6		one ever punched him.	fail to gain the detainee’s
7			compliance, pressure points can
8			be utilized and that there is a
9			pressure point behind the ear).
10	66.	Sgt. Campos returned to the table and	Campos Decl. ¶¶ 13-14; Ex. “F”
11		despite having deployed OC spray,	[Video recording] at 6:47:09-
12		Plaintiff Cornejo was still actively	6:47:54; Ex. “Y” [GEO
13		resisting the officers, including Officer	Martinez Depo.] at 113:7-
14		Martinez.	114:12, 115:11-117:19
15			
16	67.	Plaintiff Cornejo wrapped his legs to	Campos Decl. ¶ 14; Ex. “F”
17		the table, which required three officers	[Video recording] at 6:47:09-
18		to try to remove him.	6:47:54; Ex. “Y” [GEO
19			Martinez Depo.] at 113:7-
20			114:12, 115:11-117:19.
21	68.	His refusal to stand up forced the	Campos Decl. ¶ 14, Ex. “F”
22		officers to carry him out of the dorm.	[Video recording] at 6:47:09-
23			6:47:54; Ex. “Y” [GEO
24			Martinez Depo.] at 113:7-
25			114:12, 115:11-117:19.
26			
27			
28			

69.	While Plaintiff Cornejo alleges that the officers hit him on the edge of the table, the video demonstrates that, instead, beginning at around 6:47:09, Cornejo grabbed the table to prevent the officers from removing him.	Ex. “F” [Video recording] at 6:47:09-6:47:54; Ex. “N” [Cornejo Depo.] at 73:19-74:14
70.	By 6:48:19, Plaintiffs had been taken out of the dorm – i.e. 16 minutes after Diaz had initially entered in an effort to quell the disturbance caused by Plaintiffs.	Diaz Decl. ¶ 31.
71.	Medical staff was present throughout the entire incident in the dorm and confirmed that the GEO officers did not strike Plaintiffs.	Ex. “V” [Gillon Depo] at 165:4-9; Ex. “W” [Jones Depo.] at 101:23-25, 110:11-21, 114:4-10, 117:8-13, 120:25-121:8, 124:14-25.
72.	Additionally, throughout the entire incident, Plaintiffs’ failure to comply with commands prompted the other detainees in the dorm to become disruptive and ignore the commands to return to their bunks, which Plaintiffs acknowledged was a direct result of their conduct.	See Ex. “O” [Campos Depo.] at 90:11-91:22; Ex. “W” [Jones Depo.] at 103:20-104:10; Ex. “Y” [GEO Martinez Depo.] at 131:24-132:12, 133:1-18, 134:7-11.

1	73.	Also, while Officer Jindi was present	Ex. "X" [Jindi Depo.] at 50:24-
2		during the incident, she was not	51:4, 51:10-16, 52:3-5, 69:1-4.
3		involved in any use of force.	
4	74.	After each plaintiff was removed from	Ex. "N" [Cornejo Depo.] at
5		the dorm, they were taken to the	76:9-78:6; Ex. "O" [Campos
6		recreation yard where they were	Depo.] 116:2-6; Ex. "P"
7		handcuffed (if they had not already	[Castillo Depo.] at 95:8-21,
8		been handcuffed inside the dorm) and	96:5-11; Ex. "Q" [Mejia Depo.]
9		Officer Gillon, Officer Martinez,	at 81:19-25, 83:2-11; Ex. "R"
10		Officer Reyes, Sgt. Campos, and Lt.	[Rodriguez Depo.] at 108:15-
11		Diaz had no further contact with them.	23; Ex. "T" [Diaz Depo] at
12			84:8-23; Ex. "U" [Martinez
13			Depo.] at 100:14-24; Ex. "V"
14			[Gillon Depo] at 118:22-119:5,
15			113:23-25, 114:7-10; Ex. "Y"
16			[GEO Martinez Depo.] at
17			84:17-19, 85:21-23, 87:1-9,
18			93:11-17, 110:10-19; 117:24-
19			118:3, 118:18-119:1; Ex. "Z"
20			[Reyes Depo.] at 117:19-
21			118:13, 119:1-20; Campos
22			Decl. ¶ 14; Diaz Decl. ¶ 31.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

75. Thereafter, they were transported from the recreation yard to another room where Plaintiffs admitted they were seen by medical staff.

Ex. “N” [Cornejo Depo.] at 78:25-79:2; Ex. “O” [Campos Depo.] at 119:6-19, 129:16-23; Ex. “P” [Castillo Depo.] at 101:13-103:6, 103:22-3; Ex. “Q” [Mejia Depo.] at 39:4-10, 84:3-24; Ex. “R” [Rodriguez Depo.] at 111:6-112:7, 113:18-114:2; Ex. “S” [Garcia Depo.] at 47:25-48:13; Ex. “T” [Diaz Depo.] at 89:8-13; Ex. “U” [Martinez Depo.] at 60:18-19, 126:4-19; Ex. “W” [Jones Depo.] at 143:14-144:25, 149:2-21 [after a use of force incident, medical is required to take the detainee’s vitals and review a questionnaire], 153:8-154:24 [responded to intake to evaluate Plaintiffs after they were cleared to see medical], 155:23-156:12, 163:20-24 [recalled that only one plaintiff had a specific complaint], 174:15-175:5.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

76. Additionally, all Plaintiffs were decontaminated (placed in showers to rinse off the OC spray with water) and provided new uniforms.

Diaz Decl. ¶¶ 34-35; McCusker Decl. ¶ 9; Ex. “H” [GEO’s Use of Force policy]; Ex. “N” [Cornejo Depo.] at 76:9-78:6, 78:25-79:2, 82:14-17; Ex. “O” [Campos Depo.] at 119:6-19, 129:16-23, 130:13-17; Ex. “P” [Castillo Depo.] at 104:18-105:9; Ex. “Q” [Mejia Depo.] at 86:18-22, 87:22-88:19, 90:2-8, 91:16-92:4, 96:24-97:14; Ex. “R” [Rodriguez Depo.] at 163:9-164:8 [estimated that a half an hour after the incident he was decontaminated and in a new uniform]; Ex. “S” [Garcia Depo.] at 48:15-25; Ex. “T” [Diaz Depo] at 86:12-22; Ex. “U” [Martinez Depo.] at 55:6-11; 58:2-5, 58:14-19, 104:6-18, 108:11-25

1	77.	While Plaintiffs claim the	McCusker Decl. ¶ 9; Diaz Decl.
2		decontamination process was intended	¶ 8; Ex. “H” [GEO’s Use of
3		to further their injuries, it was not.	Force policy].
4		Water, which is the method used at the	
5		Facility for decontamination purposes,	
6		does reactivate the tingling sensation	
7		caused by the OC spray; however, it is	
8		necessary to remove the spray.	
9	78.	After Plaintiffs were decontaminated	McCusker Decl. ¶¶ 9, 12; Ex.
10		and seen by medical staff, they were	“H” [GEO’s Use of Force
11		taken to administrative segregation.	policy]; Ex. “A” [Detainee
12			Handbook –“Disciplinary
13			Segregation”]; Ex. “I” [GEO’s
14			Restrictive Housing Units
15			policy]; Ex. “O” [Campos
16			Depo.] at 133:1-134:7; Ex. “Q”
17			[Mejia Depo.] at 97:21-98:4;
18			Ex. “R” [Rodriguez Depo.] at
19			113:6-14; Ex. “S” [Garcia
20			Depo.] at 50:11-15, 55:21-56:8
21			
22			
23			
24			
25			
26			
27			
28			

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

79. Plaintiffs were informed that there was an investigation as a result of their conduct and a potential for discipline.

McCusker Decl. ¶ 13; Diaz Decl. ¶¶ 38-40; Ex. “A” [Detainee Handbook – “Disciplinary Segregation”]; Ex. “C” [Administrative Segregation Orders related to Plaintiffs]; Ex. “D” [Incident of Prohibited Acts and Notice of Charges related to Plaintiffs]; Ex. “I” [GEO’s Restrictive Housing Units policy]; Ex. “N” [Cornejo Depo.] at 87:7-19; Ex. “O” [Campos Depo.] at 133:1-134:7; Ex. “P” [Castillo Depo.] at 111:6-24; Ex. “Q” [Mejia Depo.] at 98:9-99:13, 156:10-21; Ex. “R” [Rodriguez Depo.] at 153:13-154:19; Ex. “S” [Garcia Depo.] at 50:11-15, 55:21-56:8; Ex. “U” [Martinez Depo.] at 70:17-20.

1	80.	Plaintiff Mejia admitted that he was	Ex. “Q” [Mejia Depo.] at 99:23-
2		given the opportunity to express that he	100:6, 101:14-102:5, 162:6-
3		did not feel he had done anything	163:5.
4		wrong (however, at his deposition he	
5		acknowledged that his actions were	
6		wrong).	
7			
8	81.	Later, they were informed that the	McCusker Decl. ¶ 13; Diaz
9		outcome of the investigation related to	Decl. ¶¶ 37-40; Ex. “A”
10		their failure to follow commands and	[Detainee Handbook –
11		engage in a group demonstration	“Disciplinary Segregation”];
12		mandated they would be disciplined.	Ex. “C” [Administrative
13			Segregation Orders related to
14			Plaintiffs]; Ex. “D” [Incident of
15			Prohibited Acts and Notice of
16			Charges related to Plaintiffs];
17			Ex. “I” [GEO’s Restrictive
18			Housing Units policy]; Ex. “N”
19			[Cornejo Depo.] at 88:7-89-20,
20			91:8-92:6; Ex. “O” [Campos
21			Depo.] at 177:11-16; Ex. “S”
22			[Garcia Depo.] at 50:11-15,
23			55:21-56:8; Ex. “T” [Diaz
24			Depo] at 136:6-11.
25			
26			
27			
28			

1 2 3 4 5 6 7 8 9 10 11 12 13	82. Pursuant to GEO policy and procedure, it is appropriate to place detainees in administrative segregation during a pending investigation and, thereafter, segregation if guilt is established – which is the case here (Plaintiffs were found in violation of Rule 213, which prohibits inciting or engaging in group demonstrations). A detainee can only be placed in disciplinary segregation after a finding by the Institution Disciplinary Panel or equivalent that the detainee is guilty of a rule violation.	McCusker Decl. ¶ 12; Diaz Decl. ¶¶ 37-40; Ex. “A” [Detainee Handbook – “Disciplinary Segregation”]; Ex. “C” [Administrative Segregation Orders related to Plaintiffs]; Ex. “D” [Incident of Prohibited Acts and Notice of Charges related to Plaintiffs]; Ex. “I” [GEO’s Restrictive Housing Units policy].
14 15 16 17 18 19	83. While in segregation, Plaintiffs were provided medical care, checked on by GEO staff, and given access to showers and phones.	Ex. “P” [Castillo Depo.] at 108:6-13; Ex. “Q” [Mejia Depo.] at 103:1-22; Ex. “S” [Garcia Depo.] at 67:8-11; Ex. “U” [Martinez Depo.] at 151:6-10; 151:21-152:2
20 21 22 23 24 25 26	84. Plaintiff Campos admitted that he had no issues contacting his attorney while in segregation, and stated that he only had an issue reaching his attorney for <i>one</i> day; yet, he never informed GEO of the alleged issue.	Ex. “O” [Campos Depo.] 141:9-12, 142:15-18, 145:9-24, 146:13-17, 202:21-203:12, 204:1-11.

1	85.	Plaintiff Garcia claimed that he was not permitted to contact his attorney after the incident; yet, he was permitted to visit with his attorney.	Ex. "S" [Garcia Depo.] at 58:6-59:23, 64:6-65:4.
2	86.	After the visit, Plaintiff Garcia's attorney gave him a new number to call and he was able to contact his attorney.	Ex. "S" [Garcia Depo.] at 58:6-59:23, 64:6-65:4.
3	87.	Plaintiff Diaz stated that he had an issue contact his attorney; however, once his attorney spoke to GEO staff about the issue (since Diaz never raised the issue with GEO), the issue was resolved.	Ex. "T" [Diaz Depo] at 94:19-21, 99:19-22, 100:1-3.
4	88.	Plaintiff Martinez claimed that GEO staff restricted his ability to contact his attorney and as soon as he raised the issue to GEO staff, the issue was resolved.	Ex. "U" [Martinez Depo.] at 156:16-158:7, 158:14-159:3
5	89.	Plaintiffs Cornejo and Castillo admitted that they did not have issues contacting their attorneys.	Ex. "N" [Cornejo Depo.] at 94:4-95:11, 97:2-17 (stating he only had issues contacting his friend after the incident), 98:2-6, 100:1-4, 100:11-21; Ex. "P" [Castillo Depo.] 22:1-8 [permitted to make calls while in segregation to persons on his "approved call list"], 112:15-113:5.

1	90.	Plaintiffs Cornejo, Campos, Castillo, and Rodriguez admitted that they never filed grievances or complaints to GEO about mistreatment or the use of force incident.	Ex. “N” [Cornejo Depo.] at 35:20-22; Ex. “O” [Campos Depo.] at 18:23-19:19, 66:5-20, 138:5-12; Ex. “P” [Castillo Depo.] at 61:11-62:6 [complained to ICE about mistreatment by GEO guards but never filed complaint or grievance to GEO], 110:25-111:2; Ex. “R” [Rodriguez Depo.] at 66:11-12, 127:18-21.
2	91.	Plaintiff Mejia claims that he filed a complaint/grievance; yet, he has no recollection as to what the subject matter of the complaint/grievance.	Ex. “Q” [Mejia Depo.] at 48:1-25, 50:11-16
3	92.	GEO officers do <i>not</i> have access to detainee complaints/grievance and, thus, have no means of determining which detainees have filed complaints/grievances.	Diaz Decl. ¶¶ 43-45; Ex. “V” [Gillon Depo] at 24:6-11; Ex. “Z” [Reyes Depo.] at 47:4-10; Diaz Decl. ¶ 42.
4	93.	Also, GEO personnel can only <i>recommend</i> to ICE that a detainee have his/her access to the phones/restricted, but ICE has to make the final decision.	Janecka Decl. ¶¶ 14-17; McCusker Decl. ¶ 14; Diaz Decl. ¶ 46; Campos Decl. ¶ 19; Ex. “J” [GEO’s Communication policy].

94. After the use of force incident, the incident was reviewed by supervisory staff and it was determined that the force was determined that the use of force was reasonable and appropriate.

Diaz Decl. ¶¶ 36, 47; Campos Decl. ¶ 17; Janecka Decl. ¶¶ 5-8; McCusker Decl. ¶¶ 10-11; Ex. “B” [Use of Force Report dated June 12, 2017]; Ex. “E” [After-Action Review Report Use of Force/Restraints related to the June 12, 2017, incident]; Ex. “F” [Video recording of incident reviewed at the after-action review]; Ex. “G” [SIR, Notification and Emails to GEO Corporate related to the June 12, 2017, incident]; Ex. “H” [GEO’s Use of Force policy]; Ex. “Z” [Reyes Depo.] at 123:3-8.

CONCLUSIONS OF LAW

Based on the foregoing undisputed facts, which have been construed in the light most favorable to Plaintiffs, the Court makes the following conclusions of law:

1. Plaintiffs cannot bring Section 1983 claims against Defendants Campos and Diaz and their only remedies against Defendants Campos and Diaz are state law claims. *Russell v. U.S. Dep’t of the Army*, 191 F.3d 1016, 1019 (9th Cir. 1999); *Minnecci v. Pollard*, 565 U.S. 118, 131 (2012).

2. In Section 1983 cases, “a plaintiff must [allege facts] that each

1 Government-official defendant, through the official's own individual actions, has
 2 violated the Constitution.” *Keates v. Koile*, 883 F.3d 1228, 1242 (9th Cir. 2018)
 3 (*citing Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009)).

4 3. Additionally, Section 1983 does not impose vicarious or *respondeat*
 5 *superior* liability; thus, a supervisor can only be “liable for constitutional violations
 6 of his subordinates if the supervisor participated in or directed the violations, or
 7 knew of the violations and failed to act to prevent them.” *Schwarm v. Craighead*
 8 552 F.Supp.2d 1056, 1082 (E.D. Cal. 2008).

9 4. In the detention context, “a viable claim of First Amendment
 10 retaliation entails five basic elements: (1) An assertion that a state actor took some
 11 adverse action against an inmate; (2) because of; (3) that inmate’s protected
 12 conduct, and that such action; (4) chilled the inmate’s exercise of his First
 13 Amendment rights; and; (5) the action did not reasonably advance a legitimate
 14 correctional goal.” *Rhodes v. Robinson*, 408 F.3d 559, 567-568 (9th Cir. 2005)
 15 (*citing Resnick v. Hayes*, 213 F.3d 443, 449 (9th Cir. 2000)).

16 5. The Fourteenth Amendment is the applicable standard for Plaintiffs’
 17 excessive force claim. *See Green v. Baca*, 306 F. Supp. 2d 903, 909 (C.D. Cal.
 18 2004); *Bloomgarden v. Cty. of Los Angeles*, No. CV 11-9449 DDP (MRW), 2016
 19 WL 11502799, at *2 (C.D. Cal. Nov. 10, 2016).

20 6. More recently, in *Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2472
 21 (2015), the Supreme Court held that to prove an excessive force claim under the
 22 Fourteenth Amendment, a pretrial detainee must show that the officers’ use of force
 23 was objectively unreasonable.

24 7. To prove a violation of procedural due process under the Fourteenth
 25 Amendment, a plaintiff must show: (1) a life, liberty, or property interest exists and
 26 has been interfered with by the state; and (2) the procedures attendant upon the
 27 deprivation of an existing interest were constitutionally insufficient. *Kentucky Dept.*
 28 *Of Corrections v. Thompson*, 490 U.S. 454, 460 (1990).

8. To prove a violation of substantive due process, a plaintiff must allege governmental action which deprives the plaintiff of life, liberty, or property interest, which may not be deprived regardless of the procedures employed. *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 846-850 (1992).

9. “The essential elements of a cause of action for assault are: (1) defendant acted with intent to cause harmful or offensive contact, or threatened to touch plaintiff in a harmful or offensive manner; (2) plaintiff reasonably believed she was about to be touched in a harmful or offensive manner or it reasonably appeared to plaintiff that defendant was about to carry out the threat; (3) plaintiff did not consent to defendant's conduct; (4) plaintiff was harmed; and (5) defendant's conduct was a substantial factor in causing plaintiff's harm.” *So v. Shin*, 212 Cal. App. 4th 652, 668–69 (2013), *as modified on denial of reh'g* (Jan. 28, 2013).

10. “A battery is any intentional, unlawful and harmful contact by one person with the person of another.” *Ashcraft v. King*, 228 Cal. App. 3d 604, 611 (Ct. App. 1991).

11. “In an action for civil battery the element of intent is satisfied if the evidence shows defendant acted with a ‘willful disregard’ of the plaintiff's rights...” or the intent to harm or offend plaintiff. *Ashcraft*, 228 Cal. App. 3d at 611; *So*, 212 Cal. App. 4th at 669.

12. The elements for a claim of IIED are (1) extreme and outrageous conduct by the defendant with the intent of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff suffering severe emotional distress; and (3) actual and proximate causation. *Hughes v. Pair*, 46 Cal. 4th 1035, 1050 (2009).

13. To prevail on a Section 52.1 claim, a plaintiff must therefore prove (1) a violation of a constitutional or statutory right (2) by intimidation, threats or coercion. *Venegas v. Cnty. of Los Angeles*, 153 Cal. App. 4th 1230, 1242 (2007).

14. A consensus has formed in the California Courts of Appeal that Bane

1 Act liability requires a threatening, intimidating, or coercive act separate and
2 distinct from the act that deprived the plaintiff of his or her federal or state rights.
3 *See Bender v. Cnty. of Los Angeles*, 217 Cal. App. 4th 968, 979 (2013).

4 15. “The elements of a cause of action for negligence ... are (a) a legal
5 duty to use due care; (b) a breach of such legal duty; and (c) the breach as the
6 proximate or legal cause of the resulting injury.” *Ladd v. Cnty. of San Mateo*, 12
7 Cal. 4th 913, 917 (1996).

8 16. A party can only be liable for aiding and abetting an intentional tort if
9 the party is aware that the other’s conduct constitutes a breach of duty *and* provides
10 substantial assistance or encouragement to the other to so act. *Austin B. v.*
11 *Escondido Union Sch. Dist.*, 149 Cal. App. 4th 860, 879 (2007).

12 Dated: November 12, 2019

BURKE, WILLIAMS & SORENSEN, LLP

14 By: /s/ Carmen M. Aguado

15 Susan E. Coleman

16 Carmen M. Aguado

17 Attorneys for Defendants

18 THE GEO GROUP, INC., DIAZ,

19 CAMPOS and CITY OF ADELANTO